

**WAIVER PROCEDURES, DENIAL, SUSPENSION, REVOCATION AND  
APPEAL PROCEDURES – 10A NCAC 70L  
EFFECTIVE OCTOBER 1, 2008**

This document addresses the changes in 70L rules effective October 1, 2008. A brief description of the new/changed rule is under each section in *italics* and the current rule is below the description. Rules that became effective October 1, 2008 are highlighted in yellow throughout this document.

**SECTION .0101 USE OF VOLUNTEERS IN CHILDREN'S SERVICES CASE  
REVIEWS**

*This rule was repealed.*

**SECTION .0102 WAIVER OF LICENSING RULES**

*There were no major changes regarding Waivers. Information regarding denials, suspensions and revocation previously found in 10A NCAC 70L.0102 (b) can now be found in new sections 10A NCAC 70L .0201 and .0301.*

**10A NCAC 70L .0102 WAIVER OF LICENSING RULES**

The North Carolina Department of Health and Human Services, Division of Social Services is the licensing authority and shall allow a waiver to a licensing rule or rules to persons subject to licensure pursuant to G.S. 131D, Article 1A in accordance with the following criteria:

- (1) Persons seeking a waiver shall submit a written request on a form developed by the licensing authority, to the licensing authority showing that another way of meeting a rule maintains the health, safety, and well-being of individuals being served at or above the level required by the rule.
- (2) No waiver shall be allowed by the licensing authority to any rule based on a standard adopted by the Building Code Council and subject to the general supervision and enforcement of the Commissioner of Insurance.
- (3) No waiver shall be allowed by the licensing authority to any rule governing fire safety.
- (4) No waiver shall be allowed by the licensing authority to any rule based upon a standard adopted by the Commission for Public Health.
- (5) The waiver when allowed remains in effect for the term of the license and may be renewed if the licensing authority determines that the health, safety and well-being of individuals being served are not threatened.
- (6) Upon receipt of the waiver request form, a decision to grant or deny the waiver shall be made by the licensing authority within 10 business days of its receipt.

**SECTION .0201 DENIAL, AMENDMENT, SUSPENSION AND REVOCATION**

*This is a new section with the various types of negative actions being broken out for clarity. Some portions of these rules were previously found in 10A NCAC 70 L .0102 (b). Agencies with a residential child care license will be familiar with rules in (a) as they are incorporated into residential rules 70L .0101.*

*Section (a) 1-5 gives additional reasons for denial of a license. Section (b) deals with denials of new licenses and (1) and (3) were added for further clarity. Section (c) is new and addresses provisional status. Although the licensing authority has previously placed agencies on provisional status, these new rules help to spell out the steps for what to do while on provisional status and steps for getting out of provisional status. Section (d) Summary Suspension is new and will be used by the licensing authority in emergency situations in which public health, safety or welfare are at risk. There were no changes to (e) Revocation.*

**10A NCAC 70L .0201 DENIAL, AMENDMENT, SUSPENSION AND REVOCATION**

(a) Denial: The North Carolina Department of Health and Human Services, Division of Social Services, is the licensing authority and shall deny a license at any time for failure to comply with licensing rules adopted pursuant to G.S. 131D, Article 1A or for operating in a manner that threatens the health, safety or

well being of individuals in the facility or served by the agency. In addition, the licensing authority may deny an application based on a determination that:

- (1) the applicant is not in compliance with rules promulgated under G.S. 131D for the facility or agency which the applicant is seeking licensure;
  - (2) the licensing authority has initiated revocation or summary suspension proceedings against any facility or agency licensed pursuant to G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, or G.S. 110, Article 7, which was previously held by the applicant and the applicant voluntarily relinquished the license;
  - (3) there is a pending appeal of a denial, revocation or summary suspension of any facility or agency licensed pursuant to G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, or G.S. 110, Article 7, which is owned by the applicant;
  - (4) the applicant has an individual as part of their governing body or management who previously held a license which was revoked or summarily suspended under G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A and G.S. 110, Article 7 and the rules adopted under these laws; or
  - (5) the applicant is an individual who has a finding or pending investigation by the Health Care Professional Registry in accordance with G.S. 131E-256.
- (b) Notice: When an application for license of a new facility or agency is denied the following applies:
- (1) Pursuant to G.S. 150B-22, the applicant shall be given an informal opportunity to provide reasons why the license should be issued.
  - (2) The licensing authority shall give the applicant written notice of the denial, the reasons for the denial and advise the applicant of the right to request a contested case hearing pursuant to G.S. 150B.
  - (3) The facility or agency shall not operate until a decision is made to issue a license, despite an appeal action.
- (c) Amendment: The licensing authority may amend a license to indicate a **provisional status** whenever the licensing authority determines there are violations of rules, but the violations do not pose an immediate threat to the health, safety or welfare of the clients served. The following applies to provisional status:
- (1) Provisional status shall be approved for not less than 30 days and not more than six months.
  - (2) Provisional status shall be effective immediately upon notice to the licensee and must be posted in a prominent location, accessible to public view, within the licensed premises.
  - (3) The facility shall inform each client residing or receiving services from the facility or their legally responsible person concerning the facility's provisional status.
  - (4) A regular license shall be issued when a facility is determined by the licensing authority to be in compliance with applicable rules.
  - (5) If a facility fails to comply with the rules within the time frame for the provisional status, the license shall automatically terminate on the expiration date of the provisional status.
  - (6) If a licensee has a provisional status at the time that the licensee submits a renewal application, the license, if renewed, shall also be of a provisional status unless the licensing authority determines that the violations have been corrected.
  - (7) A decision to issue a provisional status shall be stayed during the period of an appeal as specified in 10A NCAC 70L .0301 and the licensee may continue to display its license during the appeal.
- (d) Summary Suspension: The following applies to summary suspension:
- (1) The licensing authority shall issue an order of summary suspension and include the findings in its order if it finds that the public health, safety or welfare considerations require emergency action.
  - (2) The licensing authority shall suspend only those services as necessary to protect the public interest. An order of summary suspension shall be effective on the date specified in the order or on the date of service of the order at the last known address of the licensee, whichever is later.
  - (3) The licensee may contest the order by requesting a contested case hearing pursuant to G.S. 150B and 10A NCAC 70L .0301. The order for summary suspension shall be in full force and effect during any contested case hearing.
  - (4) The order may set a date by which the licensee shall remove the cause for emergency action. If the licensee fails to meet that deadline, the licensing authority may revoke or amend the facility's license.
- (e) Revocation: The licensing authority shall revoke a license at any time for failure to comply with rules adopted pursuant to G.S. 131D, Article 1A or for operating in a manner that threatens the health, safety or well being of individuals in the facility or served by the agency. Revocation of licensure by the licensing

authority shall be affected by mailing to the applicant or license holder, by certified mail, a notice setting forth the particular reasons for such action. A revocation shall become effective 60 days after the mailing of the notice absent a petition as specified in 10A NCAC 70L .0301. In the event of a petition for a contested case hearing a revocation shall not become effective until a final decision is made in the contested case hearing.

#### **.0301 APPEAL PROCEDURES**

*This rule was previously found in 10A NCAC 70L .0102 (b) and was broken out for clarity. There are no changes.*

#### **10A NCAC 70L .0301 APPEAL PROCEDURES**

(a) Within 60 days of the decision to deny, suspend or revoke a license the applicant or license holder may petition for a determination of his/her legal rights, privileges or duties. All petitions must be in writing and contain a statement of the facts prompting the request sufficient to allow for appropriate processing by the licensing authority.

(b) The petition for a hearing shall be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 and 26 NCAC 03 .0103. In accordance with G.S. 1A-1, Rule 4(j)4 , the petition shall be served on a registered agent for service of process for the licensing authority. A list of registered agents may be obtained from the Office of Legal Affairs.

(c) Procedures for the processing of an appeal of an adverse licensing action and for the final decision are specified in G.S. 150B, Article 3 and 10A NCAC 1A.